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Supreme Court, U.S.
FILED

001199 JAN 22 2001

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ONE RESIDENTIAL PROPERTY LOCATED AT 100 HARBOR DRIVE, UNIT 2105, SAN DIEGO, CALIFORNIA AND APPURTENANCES AFFIXED AFFIXED THERETO-PETITIONER(S)

V.

UNITED STATES OF AMERICA-RESPONDENT

MANUEL RODRIGUEZ-LOPEZ – CLAIMANT

ON PETITIION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE

NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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4408

QUESTION(S) PRESENTED

DOCKET NUMBER:

PETITIONER: Manuel Rodriguez-Lopez, et al.

RESPONDENT: United States of America

QUESTIONS PRESENTED:

I. Did the U.S. District Court in a trial by Jury revoke the defendant's rights under the sixth and fourteenth amendments to confront and cross-examine the government confidential witnesses against him when granting the government's Motion for a Directed Verdict (FRCP 50(a)) without the appearance of a single accuser at trial? Underlying the causes of action pertaining to the the government's Complaint for Forfeiture (IN REM) of Real Property is the allegations of criminal activity of drug trafficking and money laundering cited in 18 U.S.C. § 981 and § 1956 and 21 U.S.C. 881(a)(6).

II. Whether the U.S. District Court committed reversible error by unilaterally concluding that the government's evidence of probable cause-originally presented to support their Motion for Summary Judgment and denied by the District Court-can be converted as admissible evidence in a trial by Jury with no evidentiary presentation of evidence by the Government at this Trial.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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United States Court of Appeals for the Ninth Circuit Memorandum No. 99-55387, D.C. No. CV-97-00381-JSR, entered August 1, 2000.

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United States District Court Southern District Of California, Clerk Transmittal dated March 15, 1999, with copy of Notice of Appeal and Judgment Order to U.S. Court of Appeals for the Ninth Circuit.

TABLE OF AUTHORITIES CITED

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts:**

The opinion for the United States Court of Appeals appears at Appendix C to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix D to the petition and is unpublished.

JURISDICTION

For Cases from **federal courts:**

The date on which the United States Court of appeals decided the case was August 1, 2000.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 25, 2000, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF CASE

Subject civil forfeiture Case NO. 97-0381-R(RBB) was before the United States District Court, Southern District for jury trial on December 1 and 2, 1998. Claimant was not present at trial.

On May 21, 1993 claimant purchased a condominium at 100 Harbor Drive, Unit 2106, in San Diego, California. Claimant paid a total of $367,200.00 for the Unit. On January 30, 1996, claimant purchased another Unit in the same complex at 100 Harbor Drive, Unit 2105. Rodriguez-Lopez paid $290,000.00 of the total purchase price of $610,000.00 by transferring title to Unit 2106. Unit 2105 was the subject of this forfeiture action.

According to the Government, Claimant allegedly worked directly for Jose Castrillon-Henao ("Castrillon") the government alleged that Castrillon was the ringleader in the Cali Cartel.

The government alleged that Claimant held title to Unit 2105 as a straw man, and that Castrillon is the true owner. The Government claimed that Castrillon used proceeds from his drug-trafficking operations to purchase the property through Rodriguez-Lopez. The government further alleged that Castrillon alone exercised dominion and control over the property.

On March 17, 1997, the government initiated forfeiture proceedings against the property. See 18 U.S.C. § 981 (providing for forfeiture for money laundering); 21 U.S.C. § 881(a)(6) providing for forfeiture of drug-trafficking proceeds. Claimant contested the government's claim by claiming superior title to the property. Other claimants were removed from the action.

On October 27, 1997, the Government filed a motion for summary judgment. Claimant opposed the motion and subsequently filed a cross-motion for summary judgment. On May 18, 1998, the Court denied both parties' motions for summary judgment. In its decision, the Court determined that the Government had established probable cause that the property was traceable to drug proceeds. Given the evidence that Castrillon directly contributed unlawful proceeds to the purchase of the defendant property, the Court determined that the Government had established probable cause that the property was forfeitable under both 18 U.S.C. § 981 and 21 U.S.C. § 881(a)(6). The U.S. District court defined probable cause as existing if the totality of circumstances provides reasonable grounds to believe that the property was related to an alleged drug transaction, supported by less prima facie proof but more than mere suspicion. United States v. $5,644,540, 799 F.2d 1357, 1362 (9th cir 1986). Circumstantial evidence alone can support a finding of probable cause. United States v. $93,685.61, 730 F.2d 571, 572 (9th cir 1984), cert denied, 469 U.S. 831 (1984). This court's finding of probable cause shifted the burden of proof to the claimant to prove by a preponderance of the evidence that he did not use illegal narcotics proceeds to purchase the defendant property.

However, the court also found that Claimant had raised triable issues of fact concerning whether the property was purchased with unlawful proceeds. The Court found that Rodriguez-Lopez had a facially colorable interest in the property sufficient to confer standing as of Claimant. Specifically the Court noted that Claimant had produced evidence suggesting he had purchased the property with money derived

from a legitimate tuna fishing business. Furthermore, claimant provided the declaration of his daughter, the current general manager of his company, who reviewed the company's financial records and concluded that Claimant purchased the defendant property with proceeds from his tuna fishing business. Because Claimant submitted some evidence suggesting that he could have purchased the property with income from tuna fishing, the Court denied both parties' motions for summary judgment and scheduled the matter for trial.

Trial by jury was held in the U.S. District Court on December 1 and December 2, 1998. The government made their opening statement after which the claimant, Manuel Rodriguez-Lopez, commenced his case-in-chief. The burden of proof as required by Title 18 U.S.C. § 981 and § 1956 and Title 21 U.S.C. § 881(a)(6) is initially on the claimant in complaints for forfeiture of real property (in rem). The claimant must show by a preponderance of evidence that funds used to purchase the property were not obtained from illegal money laundering activities.

A tuna fish broker testified that he had purchased commercial tuna fish from Rodriguez-Lopez' tuna boats and that Rodriguez-Lopez earned hundreds of thousands of dollars operating his fleet of tuna boats. Several former employees of Rodriguez-Lopez' company testified on the details of his commercial tuna fishing business. Two witnesses refuted the hearsay comments made to U.S. DEA agents by confidential informants in pretrial investigation.

At the conclusion of Claimant's case-in-chief at trial, the government moved for an order granting it judgment under Title 50(a) of the Federal Rules of Civil Procedure. The Court

on December 2, 1998 granted the motion in its entirety. No witnesses testified for the Government nor was documentary evidence of any kind presented to the Judge or jury. The Claimant appealed this decision to the United States Court of Appeal, Ninth Circuit, which was denied.

REASONS FOR GRANTING PETITION

The Appellate Court's memorandum filed August 1, 2000 (Appendix C) decided "The Government can rely on circumstantial evidence, statements of confidential informants and otherwise inadmissible hearsay to demonstrate probable cause in a forfeiture action." The petition herein challenges the admissibility of evidence under a probable cause determination as acceptable evidence in a trial by jury. The United States Supreme Court has pointed this out in Spinelli v. United States, 393 U.S. 401, 419 (1969) holding that "affidavits of probable cause are tested by much less vigorous standards than those governing the admissibility of evidence." What the Appellate Court failed to consider and therefore concluded erroneously was their assumption that the Government's evidence supporting probable cause was properly introduced in the jury trial by the Government. Again, the United States supreme Court has determined in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 that summary judgment motions are made before trial and decided on documentary evidence, while direct verdict motions are made at trial and decided on the evidence that has been admitted. Whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case. See Anderson (Supra) 477 U.S. at 255.

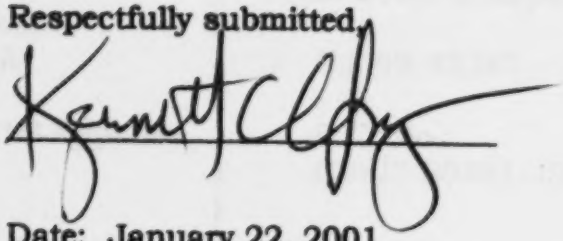
This was not the sequence in the case at hand. The trial Court simply decided that it was unnecessary for the Government to again present their allegations at trial under the strict rules of evidence demanded by Federal Rules of Evidence, Rule 403.

By this unilateral decision, the Claimant, Manuel Rodriguez-Lopez, was denied the opportunity to confront and cross-examine the government witnesses as required by the 4th Amendment in a trial by jury.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 22, 2001

APPENDIX A

Not for Publication

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
OCT 25 2000
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES OF AMERCIA **Plaintiff-Appellee,** **vs.** **RESIDENTIAL PROPERTY 100 HARBOR DRIVE, UNIT 2105, SAN DIEGO CALIFORNIA, all Appurtenances affixed thereto,** **Defendant,** **and** **MANUEL RODRIGUEZ-LOPEZ** **Claimant-Appellant,** **and** **BEATRIZ SANCHEZ-HERRERA,** **Claimant.**	No. 99-55387 D.C. No.: CV-97-00381-JSR **ORDER**

Before: KOZINSKI T.G. NELSON, and
WARDLAW, Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing and the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX B

Not for Publication

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
MAY 30 2000
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES OF AMERCIA **Plaintiff-Appellee,** **vs.** **RESIDENTIAL PROPERTY 100 HARBOR DRIVE, UNIT 2105, SAN DIEGO CALIFORNIA, all Appurtenances affixed thereto,** **Defendant,** **and** **MANUEL RODRIGUEZ-LOPEZ** **Claimant-Appellant,** **and** **BEATRIZ SANCHEZ-HERRERA,** **Claimant.**	No. 99-55387 D.C. No.: CV-97-00381-JSR **ORDER**

The panel unanimously finds this case suitable for decision without oral argument. Accordingly, the case will be submitted on the brief and record, without oral argument, on 6/7/00, in Pasadena, California. Fed. R. App. P. 34(a)(2).

FOR THE COURT:

Cathy Catterson
Clerk of the Court

By: /S/
Deputy Clerk

APPENDIX C

Not for Publication

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERCIA **Plaintiff-Appellee,** **vs.** **RESIDENTIAL PROPERTY 100 HARBOR DRIVE, UNIT 2105, SAN DIEGO CALIFORNIA, all Appurtenances affixed thereto,** **Defendant,** **and** **MANUEL RODRIGUEZ-LOPEZ** **Claimant-Appellant,** **and** **BEATRIZ SANCHEZ-HERRERA,** **Claimant.**	**FILED** **AUG 1 2000** **Cathy A. Catterson, Clerk, U.S. Court of Apeals** No. 99-55387 D.C. No.: CV-97-00381-JSR **MEMORANDUM*** —

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th cir. R. 36-3.

Appeal from the United States District Court For the Southern District of California
John S. Rhoades, District Judge, Presiding

Submitted June 7, 2000**
Pasadena, California

Before: KOZINSKI, T.G. NELSON and WARDLAW, Circuit Judges.

The Government can rely on circumstantial evidence, statements of confidential informants and otherwise inadmissible hearsay to demonstrate probable cause in a forfeiture action. See United States v. $405,089.23 u.s. Currency, 122 F.3d 1285, 1289 (9th cir. 1997); United States v. One 56-Foot Motor yacht Named the Tahuna, 702 F.2d 1276, 1283 (9th cir. 1983). Moreover, the district court did not abuse its discretion in refusing to exclude the government's evidence relating to the illegal activity of a major drug trafficker. That evidence was relevant to show that the property was bought with illegal funds and for the purpose of concealing illegal funds. See Fed. R. Evid. 403.

Rodriguez-Lopez did not present evidence that all of the funds used to purchase the defendant real property came from a legitimate source, see United States v. $215,300 United States Currency, 882 F.2d 417, 420 (9th cir. 1989), nor did he rebut the "direct relationship" established between drug proceeds and the property. See United States v. Marbella, 73 F.3d 1508, 1515-16 (9th cir. 1996) (The government must show a "direct relationship between the [illegal] proceeds and the subsequent [financial transaction]"-

**The panel unanimously find this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

but it need not show that "all the money used in the financial transaction was from an illegal activity"-to establish a violation of 18U.S.C. § 1956(a)(1)). Even when we view the evidence in the light most favorable to Rodriguez-Lopez, he failed to show by a preponderance of the evidence that the property was not subject to forfeiture. The district court properly granted judgment for the government under Federal Rule of Civil procedure 50(a). See Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994).

We do not review separately Rodriguez-Lopez's claim that the district court erred in denying his motion for summary judgment. See General Signal Corp. v. MCI Telecomms. Corp., 66 F.3d 1500, 1506-07 (9th cir. 1995); Locricchio v. Legal Servs. Corp., 833 F.2d 1352, 1358-59 (9th Cir. 1987).

AFFIRMED.

Not for Publication

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERCIA **Plaintiff-Appellee,** **vs.** **RESIDENTIAL PROPERTY 100 HARBOR DRIVE, UNIT 2105, SAN DIEGO CALIFORNIA, all Appurtenances affixed thereto,** **Defendant,** **and** **MANUEL RODRIGUEZ-LOPEZ** **Claimant-Appellant,** **and** **BEATRIZ SANCHEZ-HERRERA,** **Claimant.**	**FILED** **AUG 1 2000** **Cathy A. Catterson, Clerk, U.S. Court of Apeals** No. 99-55387 D.C. No.: CV-97-00381-JSR **MEMORANDUM*** ***This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th cir. R. 36-3.**

Appeal from the United States District Court For the Southern District of California
John S. Rhoades, District Judge, Presiding

Submitted June 7, 2000**
Pasadena, California

Before: KOZINSKI, T.G. NELSON and WARDLAW, Circuit Judges.

The Government can rely on circumstantial evidence, statements of confidential informants and otherwise inadmissible hearsay to demonstrate probable cause in a forfeiture action. See United States v. $405,089.23 u.s. Currency, 122 F.3d 1285, 1289 (9th cir. 1997); United States v. One 56-Foot Motor yacht Named the Tahuna, 702 F.2d 1276, 1283 (9th cir. 1983). Moreover, the district court did not abuse its discretion in refusing to exclude the government's evidence relating to the illegal activity of a major drug trafficker. That evidence was relevant to show that the property was bought with illegal funds and for the purpose of concealing illegal funds. See Fed. R. Evid. 403.

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**The panel unanimously find this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

but it need not show that "all the money used in the financial transaction was from an illegal activity"-to establish a violation of 18U.S.C. § 1956(a)(1)). Even when we view the evidence in the light most favorable to Rodriguez-Lopez, he failed to show by a preponderance of the evidence that the property was not subject to forfeiture. The district court properly granted judgment for the government under Federal Rule of Civil procedure 50(a). See Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994).

We do not review separately Rodriguez-Lopez's claim that the district court erred in denying his motion for summary judgment. See General Signal Corp. v. MCI Telecomms. Corp., 66 F.3d 1500, 1506-07 (9th cir. 1995); Locricchio v. Legal Servs. Corp., 833 F.2d 1352, 1358-59 (9th Cir. 1987).

AFFIRMED.

APPENDIX D

FILED
99 JAN-4 PM 1:18
Clerk U.S. District Court
Southern District of California
/S/ Deputy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. ONE RESIDENTIAL PROPERTY LOCATED AT 100 HARBOR DRIVE, UNIT 2105, SAN DIEGO, CA, APPURTENANCES AFFIXED THERETO, Defendant.	Civil No.: 97-0381-R (RRB) ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT UNDER RULE 50(a) OF FEDERAL RULES OF CIVIL PROCEDURE

I. Overview.

This civil forfeiture case was before the Court for jury trial on December 1 and 2, 1998. Assistant U.S. Attorney Leah Bussell represented the government. Kenneth Hoyt represented the Claimant, Manuel Rodriguez Lopez ("Claimant"). Claimant was not present at trial.[1]

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[1] Claimant is incarcerated in La Paz, Mexico, charged with narcotics trafficking. Claimant is also wanted on an arrest warrant issued in the Middle District of Florida in criminal case number 98-154-CR-T-24(B) on charges of cocaine trafficking and money laundering. Claimant is also charged with cocaine trafficking and

Prior to the trial, the Court heard and decided cross-motions for summary judgment. In its order, the Court determined that the Government had established probable cause for the forfeiture of the Defendant property under both legal bases identified in the complaint: as proceeds of narcotics trafficking under Title 21, United States Code, Section 881(a) (6); and as property involved in the offense of money laundering under Title 18, United States Code, Sections 1956 and 981. The Court's probable cause finding shifted the burden of proof to the claimant to prove by a preponderance of the evidence that he did not use narcotics proceeds to purchase the Defendant property.

At the conclusion of Claimant's case at trial, the Government moved for an order granting it judgment under Rule 50(a) of the Federal Rules of Civil Procedure. After due consideration of the motion and the evidence presented, the Court on December 2, 1998 granted the motion in its entirety and read its findings and legal reasoning into the record. The Court hereby incorporates those findings in their entirety into the present order. The court issues the present order to further elucidate on the Court's decision to grant the motion.

II. Background.

A. Pretrial Proceedings.

On May 21, 1993, Claimant purchased a condominium at 100 harbor Drive, Unit 2106, in San Diego. Claimant paid a total of $367,200 for the unit. On January 30, 1996, Claimant purchased another unit in the same complex at 100 Harbor Drive – Unit 2105. Rodriguez paid $290,000 of the total purchase price of $610,000 by transferring title to Unit 2106. Unit 2105 was the subject of this forfeiture action.

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money laundering in the Republic of Panama, which has issued a provisional arrest warrant.

According to the Government, Claimant allegedly worked directly for Jose Castrillon-Henao ("Castrillon"). The government alleged that Castrillon was the ringleader in the Cali cartel, a notorious Columbian drug cartel. Castrillon was initially imprisoned in Panama for laundering money, but has been extradited to the United States.

The Government alleged that Claimant held title to Unit 2105 as a straw man, and that Castrillon is the true owner. The Government claimed that Castrillon used proceeds from his drug-trafficking operations to purchase the property through Rodriguez. The Government further alleged that Castrillon alone exercised dominion and control over the property.

On March 17, 1997, the government initiated forfeiture proceedings against the property. See 18 U.S.C. § 981 (providing for forfeiture for money laundering); 21 U.S.C. § 881(a)(6) (providing for forfeiture of drug trafficking proceeds). Claimant, his wife Beatriz Rodriguez, and HSD Venture—who holds a lien against the property—each contested the Government's claim by claiming superior title to the property. HSD Venture's claim was resolved by stipulation, pending forfeiture of the property. The Court also struck Beatriz Rodriguez's claim because she lacked standing.

On October 27, 1997, the Government filed a motion for summary judgment. Claimant opposed the motion and subsequently filed a cross motion for summary judgment. On May 18, 1998, the Court denied both parties' motions for summary judgment. In its decision, the Court determined that the Government had established probable cause that the property was traceable to drug proceeds. Based upon the affidavits submitted, the Court determined that Castrillon was a major cocaine distributor, a fact that Claimant did not dispute. Furthermore, the Court further found that Castrillon had wired at least $108,000 to Claimant for the purchase of Unit 2106, which Claimant later exchanged for the Defendant

property. Moreover, the Government also submitted records from the Panamanian police suggesting that Castrillon impersonated Rodriguez and deposited funds into his account. Thus, given the evidence that Castrillon directly contributed unlawful proceeds to the purchase of the Defendant property, the Court determined that the Government had established probable cause that the property was forfeitable under both 18 U.S.C. § 981 and 21 U.S.C. § 886(a)(6).[2]

However, the Court also found that Claimant had raised triable issues of fact concerning whether the property was purchased with unlawful proceeds. Specifically, the Court noted that Claimant had produced evidence suggesting that he had purchased the property with money derived from a legitimate tuna business. Furthermore, Claimant provided the declaration of his daughter, the current general manager of his company, who reviewed the company's financial records and concluded that Claimant purchased the Defendant property with proceeds from his tuna business. Thus, because Claimant submitted some evidence suggesting that he could have purchased the property with income from tuna fishing, the Court denied both parties' motions for summary judgment and scheduled the matter for trial.

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[2] In addition to the evidence directly tracing Castrillon's funds to the unit's purchase, the Government submitted additional circumstantial evidence suggesting that Castrillon purchased the Defendant property. For example, Castrillon once claimed to own two condominiums at 100 Harbor Drive. Furthermore, Castrillon had registered for cellular telephone service under an alias and had had the bills sent to the old unit, Unit 2106. Moreover, Castrillon purchased furniture in San Diego near the time of Unit 2105's purchase, and evidence suggested that Castrillon purchased the furniture under Claimant's name and had the furniture delivered to Unit 2105. Furthermore, agents discovered that Castrillon had maintenance records for the older unit, as well as an aerial photograph of the condominium complex. Thus, this evidence, together with the evidence that Castrillon wired money to Claimant for the purchase of Unit 2106, provided the Government with probable cause to believe that the property was purchased with drug proceeds.

B. Evidence at trial.

In putting forth his case-in-chief, Claimant presented the following evidence at trial.

1. Garry Day.

The first witness, Garry Day, testified that he owned a company known as "Ocean Ventures" in San Diego. Day testified that he had purchased tuna from Claimant two or three times in 1995. Although Day did not have any of his own business records or receipts, Day testified that he thought he purchased approximately 1500 tons of tuna with a gross average sales price of $1000 per ton. Day also testified that between August 1995 and December 1995, he wire transferred approximately $160,000 into Claimant's California Commerce Bank account (as indicated on Claimant's Exhibits "BI", "AU", "AV", and "AW").

On cross-examination, Day testified that the tuna fishing industry along the western coast of Mexico was a small one, such that everyone knew each other, and that Claimant had appeared in 1993 or 1994 in La Paz, Mexico, seemingly out of nowhere. Day testified that Claimant had no familiarity with the fishing business, and that Claimant had purchased his first boat in approximately 1993, spending at least a million dollars to outfit the boat at an expensive San Diego boatyard. Furthermore, Day estimated that Claimant spent approximately 60-70% of his income on operation expenses. Day testified that Claimant had a reputation amongst the fishing community as a drug trafficker, and that Claimant had been rumored to smuggle ammonia for drug processing aboard his vessels. Finally, Day testified that the quality of the fish purchased from Claimant was poor, appearing to have been chopped up and frozen a long time.

2. Gilberto Novello.

Claimant's second witness was Gilberto Novello. Novello testified that he worked for Claimant in 1992 and assisted in the sales of tuna fish caught aboard Claimant's first vessel, the "Juliana Maria". Novello

testified that he quit working for Claimant because of Claimant's temper and mistreatment of his workers. Novello estimated that between 1993 and 1996 Claimant sold approximately 15,000 metric tons of tuna, although he admitted that he had no first hand knowledge of all the sales. Novello testified that he never knew Claimant to traffick drugs. Like Garry Day, Novello had heard that Claimant used his fishing vessels to smuggle drugs, but Novello testified he did not believe the rumors. Novello testified that he knew nothing of Claimant's banking practices or even the locations of the banks used by Claimant.[3]

3. Jorge Guadalupe Peralta Castro.

Claimant's third witness was Jorge Guadalupe Peralta Castro. Castro testified that he worked for Claimant for approximately a year between 1994 to 1995, submitting expense vouchers for Claimant's boats to the accounting department. Castro testified that Claimant owned four boats named the "Cipres," the "Vizcaino," the "Sauzal," and the "Kino," and one larger boat named the "Juliana Maria." Castro testified he only knew Claimant as a tuna fisherman.

4. Luis Octavio Lopez-Ramirez.

Claimant's fourth witness was Luis Octavio Lopez-Ramirez. Ramirez had been one of Claimant's boat captains for approximately three years. Lopez testified that he never saw the movement of any drugs on the ships he captained. He further stated that he was not aware of any concealed compartments aboard one of the ships, the "Vizcaino," but admitted he did not captain all the boats. Ramirez admitted he was the captain of the "McMax" when it was stopped and seized in La Paz, Mexico in October 1995 for cocaine trafficking. Ramirez further admitted he had been

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[3] Claimant had indicated to the Court prior to trial that Novello would be able to authenticate bank records associated with Claimant's business because Novello was a business partner and co-account holder. At trial, however, Novello claimed to know nothing of Claimant's banking practices, thus preventing him from authenticating the records.

arrested in connection with that stop, but testified that all charges had been dropped. He testified that the Mexican authorities held the "McMax" for three months before releasing it because the drugs were never found.

5. Patricio Navarro de la Torre.

Claimant's last witness was Patricio Navarro de la Torre. Navarro has been one of claimant's employees since 1994. Navarro testified that twice a month, he would pick up mail delivered to the Defendant property complex, pay the utility bills, and send the rest of the mail to Claimant in La Paz, Mexico. Navarro testified that he paid the utility bills with his own money or with blank signed checks by Claimant. Navarro also testified that, at Claimant's request, he made home owner association payments for the Defendant property about five times and had paid the real estate taxes at least once. Navarro did not know if anyone else gave Claimant money for the payments made on the Defendant property.

6. Documentary Evidence.

In addition to the aforementioned testimony, Claimant submitted into evidence the following certified real property records: a deed from the prior owners of Unit 2106 (the Grouts) conveying the unit to claimant; a trust deed in the amount of $244,000 that claimant executed for the Grouts; a deed from HSD Ventures to Claimant for Unit 2105; and a trust deed Claimant executed in favor of HSD Ventures in the amount of $102,000. Claimant also submitted Exhibit "O," which were Claimant's bank records from the California Commerce Bank from 1993 to 1996.

III. Discussion.

A. Rule 50 Analysis.

Federal Rule of Civil Procedure 50(a)(1) provides:

> If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury

> to find for that party on that issue, the court may determine the issue against the party and may grant a motion for judgment as matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

Fed. R. Civ. P. 50(a)(1). A trial court should grant judgment as a matter of law under Rule 50 if, under the governing law, "there can be but one reasonable conclusion as to the verdict." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); see also Fountila v. Carter, 571 F.2d 487, 489-90 (9th cir. 1978).[4] On the other hand, "(i)f reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." Anderson, 477 U.S. at 250-51.

Although a motion for judgment as a matter of law under rule 50(a) is procedurally different from a Rule 56 summary judgment motion,[5] the essential inquiry is the same, requiring the Court to examine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that a party must prevail as a matter of law." Id. At 251-52. When ruling on Rule 50(a) motion, as when ruling on a motion for summary judgment, the Court must view the evidence most

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[4] Other Circuits have adopted a similar approach in determining whether to grant a Rule 50(a) motion. See e.g. Walter v. Holiday Inns, Inc., 985 F.2d 1232 (3d Cir. 1993) (judgment as a matter of law properly granted in breach of fiduciary duty action because plaintiff failed to produce any evidence that would have triggered such breach); Houston v. Reich, 932 F.2d 883 (10th cir. 1991) (party in civil rights action must set forth sufficient evidence to establish question of fact for a jury to decide); Bond v. Morton Buildings, Inc., 815 F. Supp. 944, 945-946 (S.D.W.Va. 1993) (judgment as matter of law granted because court could not allow jury to speculate and evidence was insufficient).

[5] Summary judgment motions are made before trial and decided on documentary evidence, while direct verdict motions are made at trial and decided on the evidence that has been admitted. See Anderson, 477 U.S. at 251.

favorably to the non-moving party and must draw all justifiable inferences in his favor. See id. at 255; Bank of the West v. Valley National Bank of Arizona, 41 F.3d 471, 477 (9th cir. 1994); California Computer Products v. IBM corp., 613 F.2d 727, 734 (9th Cir. 1979). However, in examining the possible inferences that could be drawn from the evidence, the Court notes that:

> [a] reasonable inference is one which "supports a viable legal theory," which by necessary implication cannot be supported by "only threadbare conclusory statements instead of 'significant probative evidence.' "
>
> In determining whether an inference may be reasonable, the district court should not weigh competing inferences against each other. When there is "substantial factual evidence" supporting both an inference of [lawful and unlawful conduct], "and the critical question [involves] motive," summary judgment is inappropriate. But when there is a failure to produce such substantial factual evidence to combat summary judgment and there is "overwhelming evidence" favoring the moving party, it may be unreasonable to draw an inference contrary to the movant's interpretation of the facts, and therefore, a summary judgment would be appropriate even when motive is at issue.
>
> Thus, the object of this scrutiny is to determine whether there remains sufficient probative evidence which would permit a finding in favor of the opposing party based on more than mere speculation, conjecture or fantasy.

Barnes v. Arden Mayfair, Inc., 759 F.2d 676, 680-81 (9th Cir. 1985) (citations omitted).

As with summary judgment, the substantive law determines whether the non-moving party has presented sufficient evidence to defeat the motion. See Anderson, 477 U.S. at 255 ("[W]hether a given factual dispute requires submission to a jury must be guided

by the substantive evidentiary standards that apply to the case."). Judgment as a matter of law will not lie if there is a "genuine" dispute concerning a material fact. See id. at 248. Thus, to rebut a Rule 50(a) motion, the non-moving party must advance sufficient evidence in support of a material issue in the case. See Moore's Federal Practice 3d § 50.02[2], 50-15.

B. Applicable Forfeiture Law.

As stated, the government sought forfeiture of the Defendant property on two separate and independent grounds: as proceeds of illicit trafficking in drugs under Title 21, United States Code, Section 881(a)(6)[6], and for money laundering under Title 18, United States Code, Sections and 981[7] and 1956[8].

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[6] Title 21, United States Code Section 881(a)(6) provides:

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(6) All moneys . . . or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance [and] . . . all proceeds traceable to such exchange . . . .

See 21 U.S.C. § 881(a)(6).

[7] Title 18, United States Code, Section 981(a)(1) provides:

(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of . . . section 1956 or 1957 of this title, or any property traceable to such property . . . .

See 18 U.S.C. § 981(a)(1).

[8] Title 18, United States Code, Section 1956(a)(1)(B) provides:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity -

(B) knowing that the transaction is designed in whole or in part —

(i)to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity . . . . shall be sentenced

Section 981 permits the government to seek forfeiture of "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of . . . section 1956 or 1957 of this title, or any property traceable to such property." 18 U.S.C. § 981(a)(1)(A). In seeking forfeiture, the Government bears the initial burden to "show that there is probable cause to believe that there is a connection between the property and the criminal activity in issue, namely money laundering in violation of § 1956 or § 1957." United States v. One 1987 Mercedes Benz 300E, 820 F. Supp. 248, 251 (E.D.Va. 1993). The money laundering statute—Section 1956—prohibits a person from conducting or attempting to conduct a financial transaction knowing that the property involved is proceeds of some form of unlawful activity with intent to conceal the nature of those proceeds. 18 U.S.C. § 1956(a)(1).

Under Section 1956, the government establishes a "money laundering" violation once it traces any portion of an asset to illicit proceeds. For example, in the context of bank accounts, courts liberally permit the forfeiture of an entire bank account, even though only a portion of the proceeds are linked to unlawful activity, on the grounds that the "clean" money helped facilitate the laundering of the "dirty" money. See e.g., United States v. Tencer, 107 F.3d 1120 (5th Cir. 1997); United States v. Certain Funds, 769 F. Supp. 80, 84-85 (E.D.N.Y. 1991); United States v. All Monies, 754 F. Supp. 1467, 1472-76 (D. Hawaii 1991). Furthermore, once the government traces even a portion of the bank account to illicit proceeds, then any asset purchased from this account is considered to be a "laundered" asset; the

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to a fine of not more that $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

See 21 U.S.C. § 1956(a)(1)(i).

Government need not specifically trace the asset directly to the illicit funds. See United States v. Garcia, 37 F.3d 1359, 1364 (9th cir. 1994). Moreover, even if the illicit funds have been completely withdrawn from the account and the claimant purchases an asset with entirely "clean" money, any purchase with funds from the account would still constitute "money laundering" under Section 1956. See United States v. Marbella, 73 F.3d 1508, 1516 (9th Cir. 1996). "A contrary rule would permit laundering the proceeds of an unlawful activity through a bank account by the simple expedient of flushing the account with clean money as an intermediary stop in the money laundering cycle." Id.

Once the government establishes probable cause of a money laundering violation. "the burden then shifts to the claimant to show by a preponderance of the evidence that the purchase of the defendant property was not a transaction prohibited by § 1956 or § 1957." One 1987 Mercedes Benz 300E, 820 F. Supp. At 251. If claimant fails to carry this burden, then the government's probable cause showing suffices to permit forfeiture of the property. See id. If the res in question is a bank account, the Claimant must prove that the account does not contain proceeds traceable to drug transactions but rather contains legitimate funds. See United States v. Daccarett, 6 F.3d 37, 57 (2nd cir. 1993). The Courts note that Claimants have a heavy and difficult burden to satisfy: "No doubt uncertainty caused by the fungibility of money will make it difficult and in many cases impossible for claimants to satisfy this burden. But it is precisely the function of burden of proof rules to determine which party loses where evidence is lacking or at best ambiguous." United States v. Contents of Account, 847 F. Supp. 329, 336 (S.D.N.Y. 1994).

C. Claimant's Case in Chief.

As stated in section II.A, the Court determined that the Government had established probable cause that the property was forfeitable under both 18 U.S.C.

§ 981 and 21 U.S.C. § 881(a)(6). As discussed, the Government introduced unrefuted evidence that Castrillon, an admitted cocaine trafficker, wired funds to Claimant that were used to acquire Unit 2105. As the parties stipulated, Claimant subsequently acquired the Defendant property (Unit 2106) by making a $210,000 cash payment, executing a deed of trust for $102,000, and by "trading-in" Unit 2105. Thus, because of this trade-in, the Court determined that the Government had established probable cause that the Defendant property was traceable to unlawful proceeds.

Because the Government had established probable cause that the property was forfeitable, the burden then shifted to the Claimant to prove at trial, by a preponderance of the evidence, that no unlawful proceeds were used to purchase the Defendant property. See 19 U.S.C. § 1615. As stated, under Section 1956, the government establishes a "money laundering" violation once it traces any portion of an asset's acquisition to unlawful proceeds. Thus, because the Government established probable cause that the property was acquired with unlawful proceeds, Claimant had the burden to prove, by a preponderance of the evidence, that he acquired the Defendant property with entirely lawful funds. Furthermore, this burden required Claimant to introduce evidence specifically refuting the Government's evidence that Castrillon contributed funds used to acquire the Defendant property.

At trial, however, Claimant failed to introduce any evidence from which a jury could reasonably find that Claimant used entirely legitimate proceeds to purchase the property.[9] In attempting to carry his

[9] The Court recognizes that much of the testimony claimant introduced, discussed previously in section II.B, is not relevant to whether Claimant used legitimate proceeds to purchase the property. Nevertheless, the Court attempted to summarize the testimony of each witness presented to underscore that claimant failed to produce any evidence from which a reasonable jury could

burden, Claimant offered the testimony of Garry Day, who testified that he transferred approximately $160,000 into Claimant's California Commerce account between August and December of 1995. Even assuming that this testimony was true, such testimony does not establish that Claimant purchased the property with these exact proceeds. Furthermore, even assuming that Claimant did use these "clean funds" to purchase part of the property, such testimony does not refute the Government's evidence that Castrillon wired funds for the purchase of Unit 2106, which was "traded-in" for the Defendant property.

Furthermore, in attempting to carry his burden, Claimant introduced evidence that he had earned millions of dollars in gross income from tuna sales. Again, however, Claimant failed to sufficiently trace these supposedly legitimate proceeds to the purchase of the Defendant property. As an initial matter, Claimant presented no evidence of his net income, leaving the jury to speculate as to whether the gross income was sufficient to pay business and operational expenses or whether Claimant would have had sufficient net income to purchase the property. Further more, other than Day's testimony regarding his $160,000 wire transfer, Claimant introduced no evidence tracing the deposit of any of these tuna proceeds into the California Commerce Bank account, from which Claimant made payments on the condominium. Furthermore, this evidence of gross tuna sales did not refute the government's evidence that Castrillon contributed funds which were traceable to the Defendant property.[10]

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conclude that Claimant purchased the Defendant property with lawful proceeds.

[10] Furthermore, Claimant offered no evidence refuting the Government's circumstantial evidence that Castrillon purchased the condominium. Claimant introduced no evidence explaining why Castrillon once claimed to own two condominiums at 100 Harbor Drive, or why he had his cellular telephone bills sent to Unit 2106. Morecver, Claimant failed to introduce evidence

In sum, Claimant failed to present any evidence from which a jury could reasonably find that he acquired the property with entirely lawful proceeds. Claimant failed to introduce any evidence tracing his acquisition of the Defendant property to legitimate proceeds. Furthermore, and more important, Claimant failed to produce any evidence whatsoever suggesting a possible legitimate source for the $108,000 that Castrillon contributed to Unit 2106, which Claimant later traded-in for the Defendant property. Thus, because Claimant failed to produce any evidence from which a reasonable jury could conclude that Claimant purchased the property with entirely legitimate proceeds, the Court determined that the Government was entitled to judgment as a matter of law on the Section 981 money-laundering charge.

IV. Conclusion.

This Court has carefully scrutinized and considered the evidence submitted by Claimant and finds that it was insufficient to submit the matter for consideration by the jury. Accordingly, based upon the forgoing, it is hereby ORDERED, ADJUDGED, AND DECREED:

1. The motion of the United States for a directed verdict under Rule 50(a) of the Federal Rules of Civil Procedure is GRANTED in its entirety.

2. The defendant real property located at 100 Harbor Drive, Unit 2105, San Diego, California, more fully described on attached Exhibit 1, with all appurtenances affixed thereto, and all the contents contained therein, is hereby condemned and forfeited to the United States pursuant to Title 18, United States Code, Section 981(a)(1). The clerk is directed to enter judgment in favor of Plaintiff on its complaint.

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explaining why Castrillon purchased furniture in San Diego under Claimant's name. Finally, Claimant could not explain why Castrillon had maintenance records for the older unit, as well as an aerial photograph of the condominium complex.

3. The United States Marshal is directed and authorized to sell the Defendant property, its fixtures, appurtenances, and all contents therein in accordance with law. Costs and expenses of the United States Marshals Service and the Drug Enforcement Administration shall be deducted from the proceeds of sale after payment of the deed of trust in favor of HSD Ventures, payment of any unpaid homeowners association fees, and payment of the costs of sale.

4. Claimant's motion for a stay of the execution of judgment IS DENIED.

5. This case is ordered closed.

IT IS SO ORDERED:

Date: 1/4/99

/S/
John S. Rhoades, Sr.
United States District Judge